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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

July 9, 2008

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Honorable William E. Shinn, Jr.
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Decatur, Alabama 35602-2688

County Commissions – Sheriffs – Personnel
Boards – Employees, Employers, Employment
– Morgan County

Morgan County can place all employees of the
sheriff's department under a personnel policy
adopted by the sheriff.

Dear Mr. Shinn:

This opinion of the Attorney General is issued in response to your request
on behalf of the Morgan County Commission.

QUESTION

Can Morgan County place all employees of the
sheriff's department under a personnel policy adopted
by the sheriff?

FACTS AND ANALYSIS

From your letter of request, you informed this Office that the Morgan
County Commission adopted the Morgan County Alabama Personnel Policy
Manual ("Manual"). Because there is no specific statutory basis for the Manual,
it was adopted by the county commission pursuant to the commission's authority
to hire and regulate the terms of employment of county employees. You cite
Carroll v. Buttram, 758 So. 2d 1097 (Ala. 1999) as additional authority for
these actions. You further cited Section IV of the General Provisions of the
Manual as follows:

This document is provided as a guide and does not constitute a contract. It is not to be construed as creating a contract, or a property right or interest in employment, or an expectation of employment for a definite term. Only written specific contracts made and properly executed and authorized by act of the County Commission are to be considered as employment contracts. Morgan County is an "At Will" employer and operates under the provisions that employees have the right to resign their employment, with or without notice and with or without cause. The county has identical rights to terminate the employment relationship at any time, with or without notice and with or without cause, except as otherwise provided in this Manual for regular employees.

Morgan County Alabama Personnel Policy Manual (eff. July 10, 2005).

Moreover, it is the understanding of this Office that, as a general rule, regular employees of the county, after serving successfully for six months, attain a type of permanent employment such that they may not be terminated or seriously disciplined except for good cause in accordance with certain due process procedures that involve notice, a hearing, and an opportunity to appeal to a personnel review board that was established by a provision of the Manual.

This Manual, however, currently excludes sheriff's deputies, corrections officers in the sheriff's department, and the sheriff from coverage. You further stated that this decision was based on holdings in such cases as *Mack v. Arnold*, 929 So. 2d 480 (Ala. Civ. App. 2005) and *Whitten v. Lowe*, 677 So. 2d 778 (Ala. Civ. App. 1995) and opinions of the Attorney General to Honorable James B. Johnson, Sheriff, Baldwin County Sheriff's Office, dated August 14, 2002, A.G. No. 2002-316; and to Honorable Jack Page, Member, House of Representatives, dated November 19, 1997, A.G. 98-00038.

This unfortunately has created a dichotomy within the Morgan County Sheriff's Office wherein non-law enforcement personnel within the sheriff's office are subject to the Morgan County Personnel Manual and law enforcement officers are subject to personnel regulations promulgated by the sheriff. Accordingly, to resolve this confusion, your request seeks guidance regarding whether it would be legal to place all employees who are under the supervision of the sheriff or work in the sheriff's department under the hiring and disciplinary rules and regulations of the sheriff. This would require non-law enforcement personnel to be removed from the provisions of the Manual.

This Office has routinely stated that a sheriff has a common-law authority to appoint, suspend, and fire deputies while the county governing body has the authority to determine the number and salary ranges of the deputies, as well as to appropriate money for the overall budget of the sheriff's office. Opinions to the Honorable Jerry Lacey, Chairman, Fayette County Commission, dated May 27, 1991, A.G. No. 91-00264; Honorable Barrown D. Lankster, Attorney at Law, Demopolis, dated September 29, 1988, A.G. No. 88-00484; E. Ted Taylor, Prattville, dated June 7, 1978. As such, this Office has encouraged the county commission and the sheriff's office to cooperate with regard to personnel issues and carrying out these functions. *Lankster* at 1.

What you seek to accomplish may be done through local legislation. Absent such legislation, you now question whether the county commission may transfer its right to regulate county employees to the sheriff, who will be directly supervising such employees. It is the opinion of this Office that the Morgan County Commission may transfer its right to supervise employees to the sheriff as long as the personnel policies of the county commission and the sheriff's office are closely aligned, no employee will be deprived of a property interest, and no employee receives incongruent or inconsistent treatment as a result of the use of either of these personnel policies.

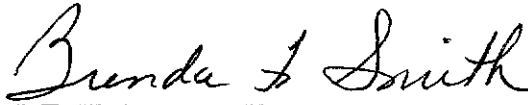
CONCLUSION

Morgan County can place all employees of the sheriff's department under a personnel policy adopted by the sheriff.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division